IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.70 OF 2006
IN
SUIT NO.2675 OF 1985
(O.A.NO.52 OF 2001 IN DRT NO.1 MUMBAI)

State Bank of Saurashtra ...Plaintiffs
Vs.
Jogesh Trading & Investment Co. Pvt. Ltd. ...Defendants
And
The Court Receiver
High Court, Mumbai. ...Respondent

Mr.Madhav Rai i/b. Negandari Shah & Himayatullah for Plaintiffs
Mr. M.P.S. Rao with Mr. S. Deshmukh with
Mr. H.L. Sudhakar i/b. Khaitan & Co. for Defendants

CORAM: SMT. ROSHAN DALVI, J.
DATED: 20TH FEBRUARY, 2007

P.C.

1. The Plaintiffs are the Lessees of the Defendants under the agreement contained in the letter of the Plaintiffs dated 2nd March, 1981. The Plaintiffs have to pay lease rent at the rate of Rs.13.75 per sq. ft. of a built up area per month to the Defendants. The premises is approximately 250 sq. ft. in area therefore, the lease rent payable would be Rs.3,43,750/- .

2. Under the said Lease Agreement dated 2nd March, 1981 the period of lease was 10 years with an option of renewal for further 5 years. The renewal was to be upon the rent agreed to be paid by the other lessee of the Defendants who was SBI. Hence, from 1991 the lease rent was to be altered.

3. The Bank filed this suit in 1985 pending the Lease Agreement in respect of a loan of Rs.25 Lakhs granted by the Plaintiff Bank to the Defendants under an equitable mortgage.

4. The Court Receiver came to be appointed in the suit initially on 17th October, 1989. This was in the Plaintiff's Notice of Motion taken out in this suit in 1989 inter alia for the appointment of the Court Receiver with a direction not to disturb the Plaintiffs' possession in the suit premises as the lessees and upon payment of society charges by the Court Receiver and for which the Plaintiffs were to put the Court Receiver in funds with the specific prayer that the amount so expended by the Court Receiver be tagged to the Plaintiff's claim in the Suit.

5. The Plaintiffs continued to pay the lease rent to

the Court Receiver during the period of the initial lease. The Plaintiffs also continued to put the Court Receiver in funds for payment of society's charges.

6. The initial period of lease expired in 1991. The Plaintiffs continued in possession. The Court Receiver continued in the suit. The further term of the lease for payment of rent upon its renewal was not enforced by the Defendants.

7. The Court Receiver was confirmed in 1993. The suit was transferred to DRT-1 and later dismissed on 14th June, 2004 for want of prosecution. I am told that the Court Receiver has not been discharged. I am also told that the Plaintiffs have handed back the possession of the leased premises to the Defendants on 30th April, 2005.

8. The Defendants have taken out this Chamber Summons for payment of Rs.4,48,37,825/- or Rs.3,16,72,125/- as compensation for use, occupation and enjoyment of the suit premises from 5th April, 1991 to 30th April, 2005. The Chamber Summons is also for enquiry to ascertain the loss caused to the suit property by non recovery/payments of just adequate

compensation under the provisions of Order 40, Rule 4 Sub Rule 2 of the CPC which is by way of Bombay High Court amendment. The Chamber Summons is for further relief that the Plaintiffs compensate the Defendants for the loss caused by such non recovery/nonpayment of compensation.

9. It must be first appreciated that the agreement to lease continued in the letter dated 2nd March, 1981 as enforceable between the parties. Clause (d) of the agreement relates to the renewal of the lease on mutually agreed terms. Those are the terms that the Defendants now seek to enforce. The cause of action, if any, on the term relating to the renewal of the lease accrues to the Defendants as the lessees upon the expiry of 10 years period of lease when it would come up for renewal on mutually agreed terms mentioned in that clause.

10. Whether or not the Court Receiver is appointed and whether or not the suit premises is subject to litigation and the suit premises is custodia legis, it is for the Defendants to claim further amounts of rent and renew the lease.

11. The Court Receiver having been appointed, he would be guided and bound by the order of such appointment. The order appointing Court Receiver makes no reference to any royalty payable except the lease rent itself and the society charges. The Court Receiver has collected the lease rent and the Plaintiffs have paid the lease rent. The Plaintiffs have put the Court Receiver in funds for the Society's expenses and the Court Receiver has paid the society's expenses. The order of appointment of Court Receiver which was in terms of prayer (a)(iii) does not go further.

12. During the pendency of the term of the Court Receiver the lease agreement came up for renewal. In fact when the Notice of Motion came up for hearing and the Court Receiver was confirmed in 1993, the initial period of lease had expired and the cause of action which would accrue to the Defendants for renewal on further terms had already accrued. Yet at the time the Court Receiver was confirmed the Defendants failed to apply for further compensation as per the mutually agreed terms considering what their other lessee, the SBI, would have paid the Defendants.

13. The Defendants now claim the loss which they

claim to have suffered. It has to be seen whether the loss, if any, suffered by the Defendants can be adjusted or calculated despite the total absence of any claim by the Defendants.

14. The Defendants never applied to the Court even after the confirmation of the order of Court Receiver and during the pendency of the suit either in this Court or before the DRT. It is the contention of the Defendant that the Court Receiver himself, without any request or application by the Defendants, should have gone through the agreement of lease and enforce clause (d) thereof. That contention is entirely erroneous. Upon the right having accrued to the Defendants the Defendants should have applied before the Court Receiver or before this Court to claim higher compensation. They having failed and neglected to so claim, the Court Receiver was not enjoined to claim further compensation.

15. This application is made under the aforesaid provisions contained in Order 40 Rule 4(2) of the CPC. It runs thus :

(2) The Court may, at the instance of any party

to any suit or proceeding in which a Receiver has been appointed or of its own motion, at any time not beyond three years from the date of his discharge by the Court, make an enquiry as to what amount, if any, is due from the Receiver as shown by his accounts or otherwise, or whether any loss to the property has been occasioned by his wilful default or gross negligence, and may order the amount found due or the amount of the loss so occasioned to be paid by the Receiver into Court or otherwise within a period to be fixed by the Court. All parties to the suit or proceeding and the Receiver shall be made parties to any such enquiry. Notice of the enquiry shall be given by registered post prepaid for acknowledgment to the surety, if any, for the Receiver; but the costs of his appearance shall be borne by the surety himself, unless the Court otherwise directs:

Provided that the Court may, where the account is disputed by the parties and is of a complicated nature, or where it is alleged that loss has been occasioned to the property by the wilful default or gross negligence of the Receiver, refer the parties to a suit. In all such cases, the

Court shall state in writing the reasons for the reference."

(emphasis supplied)

16. A reading of the provision shows that such application is in respect of amounts due from the Court Receiver as shown by his Accounts. It may also be for any loss to the property occasioned by the wilful default or gross negligence of the Court Receiver. The Court may refer the parties to a suit for reasons stated in the reference.

17. It can be seen that the two requirements which would give cause to the Defendants to apply by way of this Chamber Summons are not present in this case. The amount due from the Court Receiver is not to be ascertained from his Accounts. The loss caused by the Court Receiver – by his willful default or gross negligence – is not shown. In fact the negligence is of Defendants alone. No loss has been caused by the Court Receiver. The Court Receiver continued to recover the rent as before until possession of the leased premises, for which he was appointed, was handed over to the Defendants.

18. The Defendants' claim is to enforce clause (d). That is a separate claim, the cause of action of which accrued due upon the initial 10 years' lease period having expired. The Defendants should have applied for such relief reasonably soon thereafter.

19. Such application should have been made at the time of the confirmation of the order of the Court Receiver or soon thereafter. That was not done until possession was taken back and even thereafter. The Defendant's suit, if any filed at present would also be hopelessly barred by the law of limitation, the cause of action having accrued in 1991.

20. The Defendant's application completely lacks bonafides. The Defendants claim only on the basis that the Court Receiver is yet not discharged. No amount can now be given to the Defendants either by the Plaintiffs or by the Court Receiver. The very reliance upon the provisions of Order 40 Rule 2(4) is misplaced as no loss is caused by the Court Receiver and no accounts have to be settled of the Court Receiver with regard to the claim now made.

21. The Chamber Summons is dismissed.

(SMT.ROSHAN DALVI, J.)